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JACOB L. EATON, CSB NO. 244834
M. JOSEPH WHITTINGTON, CSB NO. 295516
KLEIN, DENATALE, GOLDNER,
COOPER, ROSENLIEB & KIMBALL, LLP
4550 California Avenue, Suite 200
Bakersfield, California 93309
Telephone: (661) 395-1000
Facsimile: (661) 326-0418
Email: jeaton@kleinlaw.com, jwhittington@kleinlaw.com

Attorneys for Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

In re:

J & D WILSON AND SONS
DAIRY,

Debtor-in-Possession.

Case No. 14-10588-B-11
Chapter 11
DC No. UST-1

Date: September 11, 2014

Time: 9:00 a.m.

Place: United States Bankruptcy Court
Department B, Courtroom
2500 Tulare Street, Fifth Floor
Fresno, California

Judge: Honorable W. Richard Lee

**OPPOSITION TO UNITED STATES TRUSTEE'S
MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. § 1112(b)**

**TO THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT
OF CALIFORNIA:**

J & D Wilson and Sons Dairy, Debtor-in-Possession, ("Debtor") hereby opposes the
United States Trustee's Motion to Dismiss Case Pursuant to 11 U.S.C. § 1112(b) filed on
August 13, 2014, and represents the following:

1. Debtor filed a voluntary petition under Chapter 11 on February 7, 2014. As of
the date of the filing of this opposition, Debtor has not filed a disclosure statement or plan of
reorganization.

KLEIN, DENATALE, GOLDNER,
COOPER, ROSENLIEB & KIMBALL, LLP
4550 CALIFORNIA AVENUE, SECOND FLOOR
BAKERSFIELD, CALIFORNIA 93309

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COOPER, ROSENLIB & KIMBALL, LLP
4550 CALIFORNIA AVENUE, SECOND FLOOR
BAKERSFIELD, CALIFORNIA 93309

1 2. A court may not dismiss a case without cause. 11 U.S.C. § 1112(b)(1). The
2 United States Trustee states that the Debtor's failure to file a plan and disclosure statement
3 constitutes cause for dismissal of Debtor's case. However, delay by a debtor must be both (a)
4 unreasonable and (b) prejudicial to creditors. *See In re AdBrite Corp.*, 290 B.R. 209 (Bankr.
5 S.D. N.Y. 2003). Further, the unique circumstances of each case control whether failure to file
6 a plan is unreasonable delay. *See In re De Jounghe* 334 B.R. 760, 771 (B.A.P. 1st Cir. 2005).

7 3. In the case at hand, Debtor's delay in filing a plan is not unreasonable due to the
8 complexity of the case and the complexity of the agreement sought by Wells Fargo Bank.

9 4. Debtor's case is complicated with multiple constituencies that need to be
10 negotiated with, including (a) Wells Fargo Bank as operating lender, (b) Farm Credit West as
11 mortgage lender, (c) C.A. Vanderham & Sons Dairy ("CA Vanderham") as landlord and large
12 unsecured creditor, (d) John Deere as a secured equipment lender and lessor, and (e) general
13 unsecured creditors including Western Milling which holds a large unsecured claim that is
14 secured by a deed of trust against real property owned by CA Vanderham, which may give rise
15 to an indemnity claim if CA Vanderham's property is used to pay Western Millings claim. The
16 interplay between these constituencies, possible partial change of ownership of Debtor,
17 unwinding of related party connections, and consideration of tax impacts of the changes add to
18 the complexity of the case. Furthermore, Debtor must seek to restructure more than \$26
19 million in debt through the plan. The time it has taken to formulate a plan is not unreasonable
20 because of the complexity and amount of debt at issue.

21 5. Debtor has been working productively and in good faith with creditors including
22 Wells Fargo Bank, Farm Credit West, and CA Vanderham to produce a plan that is both
23 feasible and in the best interests of Debtor and creditors. While these negotiations have not yet
24 produced plan that has been filed, Debtor and these creditors have made substantial progress
25 toward the agreement on a consensual plan. Debtor and Wells Fargo Bank have reached an
26 agreement in concept regarding the terms of a plan except for one covenant. Debtor and Farm
27 Credit West have reached an agreement in concept regarding the terms of a plan except for one
28 point. Debtor has not filed a plan to date because negotiations with these constituencies has

1 been ongoing and productive, and Debtor did not want to derail negotiations by filing a plan
2 that had not be agreed upon amongst the parties.

3 6. Debtor will file a disclosure statement and plan that is confirmable on or before
4 September 3, 2014, whether or not a final agreement with all of Debtor's creditors is reached.

5 7. For all of these reasons, Debtor's delay in filing a disclosure statement and plan
6 has not been unreasonable.

7 8. No cause exists to dismiss Debtor's case for delay because (a) Debtor's delay
8 has been reasonable under the circumstances, and (b) the United States Trustee has not shown
9 that the debtor's delay has been prejudicial to creditors. Additionally, the United States Trustee
10 has not identified unique circumstances to this case that would allow the Court to grant the
11 motion. Therefore, the United States Trustee has not established that cause exists to dismiss
12 Debtor's case.

13 CONCLUSION

14 WHEREFORE, Debtor prays that:

- 15 1. The Court deny the United States Trustee's Motion to Dismiss; and
16 2. For other and further relief to Debtor as the Court deems proper.

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18 Date: August 26, 2014

KLEIN, DENATALE, GOLDNER,
COOPER, ROSENLIB & KIMBALL, LLP

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21 By 

Jacob L. Eaton,
M. Joseph Whittington
Attorneys for Debtors-in-Possession

KLEIN, DENATALE, GOLDNER,
COOPER, ROSENLIB & KIMBALL, LLP
4550 CALIFORNIA AVENUE, SECOND FLOOR
BAKERSFIELD, CALIFORNIA 93309